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Filing date: **10/01/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192121
Party	Plaintiff Wyse Technology Inc.
Correspondence Address	Lynne M.J. Boisineau, and all others McDermott Will & Emery LLP 18191 Von Karman Avenue Suite 500 Irvine, CA 92612 UNITED STATES ocipdocketing@mwe.com, lboisineau@mwe.com, aespinoza@mwe.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Lynne M.J. Boisineau/
Date	10/01/2009
Attachments	MOTION TO AMEND NOTICE OF OPP.pdf (3 pages)(32359 bytes) AMENDED NOTICE OF OPP.pdf (6 pages)(64266 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

_____)	
Wyse Technology Inc.,)	
)	Opposition No. 91192121
Opposer,)	Serial No. 77/681,376; 77/681,370
)	
v.)	Marks: TECHNOWISE and THE TECHNO
)	WISE GROUP (and Design)
The PowerWise Group, Inc.)	
)	
Applicant.)	
_____)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Application Nos.: 77/681,376; 77/681,370
Marks: TECHNOWISE and THE TECHNO WISE GROUP (and Design)
Applicant: The PowerWise Group, Inc.
Filed: March 02, 2009
Published: June 02, 2009
International Classes: 009
For: Electronic controllers and microprocessor-based hardware systems used to reduce power consumption.

MOTION TO AMEND NOTICE OF OPPOSITION

Petitioner, by and through its counsel, hereby makes this motion to amend the Notice of Opposition pursuant to F.R.C.P. Rule 15 and TBMP §507.

“A party to an inter partes proceeding before the Board may amend its pleading once as a matter of course at any time before a responsive pleading is served.” *TBMP 507.01*. Applicant's Answer to the Notice of Opposition is due November 9, 2009. As of this date, Applicant has not served petitioner's counsel with its Answer to the Notice of Opposition.

Pursuant to the October 1, 2009 order issued by the Trademark Trial and Appeal Board allowing the above-referenced Notice of Opposition to move forward and dismissing Opposition

No. 91192122 due to a duplicative filing, Petitioner has added the additional trademark application serial number 77/681,370 to the Amended Notice of Opposition. Applicant will not be prejudiced by the within amendment since Applicant has not filed an Answer, actual discovery has not commenced, and the state of the Opposition is preliminary. Accordingly, Petitioner requests acceptance of the within Motion and the annexed Amended Notice of Opposition.

Dated: October 01, 2009

Respectfully Submitted,

WYSE TECHNOLOGY INC.

By: /Lynne M.J. Boisineau/

Lynne M.J. Boisineau
MCDERMOTT WILL & EMERY LLP
18191 Von Karman Ave., Suite 500
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Attorney for Opposer

CERTIFICATE OF SERVICE

Opposer, Wyse Technology Inc., hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon counsel for Applicant, The PowerWise Group, Inc., on this 1st day of October, by First Class U.S. Mail, postage prepaid, at the following address:

John A. Tang
STRASBURGER & PRICE, LLP
1401 McKinney Street, Suite 2200
Houston, Texas 77010-4035

/Lynne M.J. Boisineau/

Lynne M.J. Boisineau
Attorney for Opposer

ORC 468910-1.073320.0099

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AMENDED NOTICE OF OPPOSITION

Dear Sir:

Wyse Technology Inc., a corporation organized and existing under the laws of Delaware, having its principal place of business at 3471 North First Street, San Jose, California 95134 (“Opposer”), by and through its attorneys, hereby states that it will be damaged by registration of the marks “TECHNOWISE” and “THE TECHNO WISE GROUP (and Design)” covered by U.S. Application Serial Nos. 77/681,376 and 77/681,370 owned by The PowerWise Group, Inc. (“Applicant”), and hereby opposes registration of same.

The grounds for the notice are as follows:

1. Opposer provides, *inter alia*, computers and computer peripherals; microprocessor-based computing units and video display terminals, comprising of keyboards and cathode ray tube displays, sold to original equipment manufacturers and authorized resellers of hardware and related goods; thin and zero clients, notebook computers, notebook thin and zero clients, video display terminals, monitors, keyboards, cathode ray displays, adapters, cables and memory; computer operating system software; thin and zero client operating system software; computer application system consisting of an operating system which manages networking, security, and user interface functions of a thin client or similar device, and includes support for integrated software designed to display application functionality from a data center utilizing third party terminal services, virtualization systems, terminals, network appliances and servers; device management software for use in operating computer hardware and computer peripherals; downloadable multimedia software and multimedia software recorded on CD-ROM for providing television, entertainment, news and information programming via a wireless network (“Opposer’s Goods”).

2. Since long prior to Applicant’s filing of its applications to register the marks “TECHNOWISE” and “THE TECHNO WISE GROUP (and Design),” Opposer has used, advertised and promoted in commerce, and continues to use, advertise and promote in commerce, Opposer’s WYSE and WYSE TECHNOLOGY marks in connection with Opposer’s Goods.

3. Opposer owns extensive common law rights to its WYSE and WYSE TECHNOLOGY marks that pre-date Applicant’s rights, if any. In addition, Opposer owns U.S. Trademark Registration Nos. 1,461,695; 3,688,162; and, 3,685,036 for the goods identified in Paragraph 1, *supra*, in Class 9.

4. Opposer has expended substantial resources to advertise and promote Opposer’s Goods, all under Opposer’s WYSE and WYSE TECHNOLOGY marks.

5. By reason of Opposer’s advertisement, sale, offering for sale, promotion and use, and the world-wide distribution of Opposer’s products, Opposer’s WYSE and WYSE

TECHNOLOGY marks have come to be recognized as signifying Opposer. Opposer has built up extensive goodwill in its WYSE and WYSE TECHNOLOGY marks.

6. Prior to Applicant's filing of its applications to register the marks "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)" purchasers had come to recognize Opposer's WYSE and WYSE TECHNOLOGY marks as identifying goods emanating exclusively from Opposer.

7. On March 02, 2009, Applicant filed applications to register "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)" for goods identified as "electronic controllers and microprocessor-based hardware systems used to reduce power consumption," in Class 9 (Application No. 77/681,376 and 77/681,370). The subject applications were published for opposition on June 02, 2009 in the Official Gazette (Trademarks) of the United States Patent and Trademark Office ("USPTO").

8. On August 03, 2009, Opposer filed requests for extension of time to file a Notice of Opposition in order to pursue ongoing settlement discussions with Applicant, and the extensions of time were granted by the USPTO Trademark Trial and Appeal Board ("TTAB") the same day.

9. Pursuant to the TTAB's grant of the extensions of time to oppose, a Notice of Opposition to the applications was required to be filed by September 30, 2009. Therefore, the original Notice of Opposition was timely filed.

10. The goods "electronic controllers and microprocessor-based hardware systems used to reduce power consumption," in Applicant's herein-opposed applications are similar and related to Opposer's Goods, with which Opposer uses the WYSE and WYSE TECHNOLOGY marks.

11. Applicant's marks, "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)" are phonetically similar to Opposer's WYSE and WYSE TECHNOLOGY marks. Specifically, "WISE" and WYSE are phonetically identical and confusingly similar, and the term "TECHNO" can easily be deemed an abbreviation of the term TECHNOLOGY which is a prominent feature of Opposer's trade name and registered trademarks.

12. Applicant's use and applications for "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)" with the goods specified in its trademark applications Serial Nos. 77/681,376 and 77/681,370, are likely to cause confusion, deception and/or mistake among the relevant public.

13. Applicant's use and applications for the marks "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)" are likely to falsely suggest a connection with Opposer and Opposer's WYSE and WYSE TECHNOLOGY marks.

14. Applicant's use and registration of the marks "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)" interfere with Opposer's WYSE and WYSE TECHNOLOGY marks and will damage Opposer, its business and its goodwill.

15. Opposer's WYSE and WYSE TECHNOLOGY trademarks are famous because they are widely recognized by actual and potential customers as a designation of Opposer's goods, particularly goods relating to computers, computer peripherals, and microprocessor-based computing units. Thus, Opposer's WYSE and WYSE TECHNOLOGY trademarks are famous and distinctive within the meaning of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

16. Additionally, Opposer's WYSE and WYSE TECHNOLOGY marks are famous, and were famous among Applicant's actual and potential customers prior to Applicant's filing of a trademark applications for "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)."

17. Registration of Applicant's marks likely will cause some of Opposer's actual and potential customers to think of Applicant, and no longer solely of Opposer, when they encounter the terms "TECHNOWISE" and "THE TECHNO WISE GROUP (and Design)" in connection with advertising and the offering of electronic controllers and micro-processor based hardware systems.

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's marks and prays that it be denied.

Dated: October 01, 2009

Respectfully Submitted,

WYSE TECHNOLOGY INC.

By: /Lynne M.J. Boisineau/

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Attorney for Opposer

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John A. Tang
STRASBURGER & PRICE, LLP
1401 McKinney Street, Suite 2200
Houston, Texas 77010-4035

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